

To: Mayor and City Council
Cc: John Szerlag, City Manager
Lori Grigg Bluhm, City Attorney

From: Robin Beltramini, Council Member

Subject: MML training, *How to Pay for Public Projects*,
March 19, 2002

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This session did, and therefore this report will, contain some information you may find redundant. However, I believe it will provide a basic primer for some of us.

The trainers for the morning, general session were: Joel Piel, Partner, Miller, Canfield, Paddock and Stone; Mark Schrupp, Partner, Miller, Canfield, Paddock and Stone; and Dick Baldermann, Administrator of Local Audit and Finance Division, Michigan Department of Treasury. I learned that Troy uses almost all financing avenues available—not to become overextended, but to take advantage of a diversity of options.

Joel Piel—Municipal Bonding and Financing

First series of questions to be answered is, “How do cities issue debt?” That is:

- What is the statutory authority to borrow?
- Does the statute authorize debt for this purpose?
- Does the statute allow this sort of payback?
- What procedures must be followed?

Lawful borrowing is by cities issuing a bond or a note—substantially interchangeable in fact, but differently “named” by statute. Unlawful borrowing would be money from a bank, or similar agreement. However, cities can enter into installment purchase agreements.

Except for a General Law Township, all municipalities have debt limits, by law. Home Rule Cities (Troy) has a limit of not more than 10% of the SEV revenue. However, Michigan Transportation Bonds, contract bonds by court order, MDEQ/pollution/hospital bonds are not part of the 10%. Special Assessment Bonds are limited to 3% of SEV (impact to a 12% overall limit) if converted to limited revenue bonds. Capital Improvement bonds are limited to 5%. When direct debt and overlapping debt combined equal more than 10%, credit worthiness becomes an issue. These situations, historically, have been avoided by Troy and our AAA bond rating is the result. GO bonds can be either “limited”—levied from ad valorem taxes without restriction and voted or “unlimited”—payable within charter and statute limitations. Municipal debt is regulated by SEC, indirectly, and IRS, directly. Neither the SEC Act of 1933 or 1924 enables regulation of municipalities. However, the SEC can regulate

buyers. Therefore, cities need continuing disclosure of undertaking. The IRS decides the “tax exemptness” by virtue of use of proceeds or buyers of the bonds.

Act 34 allows for three new types of borrowing that can be done by resolution, without necessity of voter approval: Capital Improvement Bonds, Bond Anticipation Notes, and Grant Anticipation Notes. Regular sizing rules apply.

Brief definitions of other financing tools available to cities:

Downtown Development Authority May be created to halt property deterioration, to increase property tax valuation in the business district, to eliminate causes of deterioration, and to promote economic growth (1975 PA 197, MCL 125.1651)

Tax Increment Finance Authority available prior to 1989 has been replaced by the LDFA. Boundaries cannot be expanded. (1980 PA 450, MCL 125.1801)

Local Development Financing Authority may be created to encourage local development, to prevent conditions of unemployment and to promote growth. (1986 PA 281, MCL 124.2151)

Brownfield Redevelopment Authority may be created to clean up contaminated sites, thus allowing the property to revert to productive economic use. (1996 PA 381, MCL 125.2651)

All of the above use tax increment financing revenue—the capture of the increase in property tax revenue in a defined district to fund capital improvements within the district.

Tools which do not use tax increment financing revenues are:

Economic Development Corporation may be created to alleviate and prevent conditions of unemployment and to assist industrial and commercial enterprises (1974 PA 338, MCL 125.1601)

Principal Shopping District may be created to develop or redevelop a principal shopping area and to collect revenues, levy special assessments and issue bonds to pay for its activities. (1961 PA 120, MCL 125.981)

Business Improvement District may be created to develop a more successful and profitable business climate in a defined area, and to collect revenues, levy special assessments and issue bonds to pay for its activities. (1961 PA 120, MCL 125.981)

Mark Schrupp—Difference between a Fee and a Tax

Bolt v. City of Lansing has caused all sorts of rethinking of fee systems. In fact, the test of a legal user charge since *Bolt* is:

- The fee must serve a regulatory purpose
- It must be proportionate to the necessary costs of services
 - Includes not being able to charge today's user to pay off bonds for infrastructure which is designed to outlast the bond or the current user.
- It must be voluntary

This is definitely “hair-splitting” for attorneys. I did return with some concern, which I shared, with our Legal Department. Obviously, some services must be provided through taxation, such as police and fire, because all citizens use them, in some degree. However, other services are voluntary and, therefore must be provided through user fees, but must also have some regulatory purpose. I am assured that our fees have been looked at in light of Bolt and are in compliance.

Dick Baldermann—Municipal Expenditures

The rule of thumb is that all expenditures of public funds must serve a public purpose. “Funds” also includes in kind expenditures such as use of park space. The Michigan Department of Treasury is looking closer at these expenditures than ever before, in part because money, local and state, is so tight. The Department feels the need to be the protector of the tax dollar. Examples from this 20-page plus handout include:

- Purchase of coffee, snacks, etc. is allowable when done in conjunction with regular or special meetings for firefighters, employees, or dedication of buildings. Coffee and donuts for employees during regular working hours is improper unless provided for in a collective bargaining agreement of employment policy.
- Retirement functions, including plaques, are usually not for a public purpose.
- Travel and meals as part of the cost of training volunteers to perform emergency services are deemed a public purpose.
- Contracts for a specific public service or benefit (such as tax collections, garbage collection) that the unit can legally perform are lawful
- Registration fees, travel and lodging expenses for attendance at useful public informational or educational workshops and seminars for officials or employees are lawful.
- Contributions that are not specifically authorized by the Constitution or state statute cannot be authorized regardless of the worthiness of the cause. Examples of such prohibited expenditures where there is no contract for specific services to lawful wards or functions of the local unit have been negotiated are:
 - Contributions to churches, veterans, non-profit organizations
 - Donations, including use of property or equipment, to such organizations as Little League, Scouts, Big Brothers/Sisters
 - Office picnics
 - Flowers to the sick/deceased

The legality of a proposed expenditure might be determined by asking the following questions:

- Is the purpose specifically granted by the Constitution, by statute, or by court decision? Without a specific grant of authority, the following questions must be asked.
- Is the expenditure for a public purpose? Who will be the primary beneficiary? Is the beneficiary a public or private organization? Is the expenditure for the public benefit and welfare?
- Is the city contracting for services that the city is legally authorized to provide?
- If the city is legally authorized to provide the contracted service, then is the operation or service under the direct control of the city? If the city does not directly control, or have an oversight provision, the expenditure will, most probably, be deemed illegal.

Expending public funds for a private purpose is illegal under Michigan law and the Constitution. There is a whole series of court decisions that determined that the cause was worthy (e.g., improving highways, amenities within the community and the like), but the purpose was ultimately private in nature. Additionally, there is the question of a public purpose, but the operation is not under control of the city.

Afternoon roundtable discussions

Facilitators from various state agencies provided grant information throughout the afternoon. I brought back and shared with Administration information from DNR, MDEQ, and the Council for Arts and Cultural Affairs. I specifically was interested in the CACA program which allows up to \$100,000 in grant funds, per year, for capital improvements to a cultural or artistic site (Historical museum and its components qualify).

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